IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 13TH APRIL 2007 / 23RD CHAITHRA 1929

MACA.No. 191 of 2004()

(O.P. (MV) 2304/97 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL,KOTTAYAM)

APPELLANTS/PETITIONERS.

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1. K.A.JOSEPH,
KOTTAMURICAKAL,
KOTTAMURI P.O.
THRIKKODITHANAM,
CHANGANACHERRY.

2. ALEYAMMA JOSEPH,
KOTTAMURICAKAL,
KOTTAMMURI P.O.
THRIKKODITHANAM,
CHANGANACHERRY.

3. ANTONY, S/O.JOSEPH,
KOTTAMURICKAL,
KOTTAMURI P.O.
THRIKKODITHANAM,
CHANGANACHERRY.

4. SABU,
S/O.JOSEPH,
KOTTAMURICKAL,
KOTTAMURI P.O.
THRIKKODITHANAM,
CHANGANACHERRY.

5. JAMES,
S/O.JOSEPH,
KOTTAMURICKAL,
KOTTAMURI P.O.
THRIKKODITHANAM,
CHANGANACHERRY.

6. DAISY,
W/O.SEBASTIAN CHETHIKKAD,
CHANGANACHERRY.

BY ADV. SRI.JOHN VARGHESE

RESPONDENTS: RESPONDENTS.
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1. ABDUL LATHEEF,
SAMEENA MANZIL,
FATHIMAPURAM P.O.
CHANGANACHERRY.

2. SABU MATHEW,
KAKKATTU HOUSE,
PALLIKANAM KARA,
KALKUNTHAL VILLAGE,
IDUKKI DISTRICT.

3. NATIONAL INSURANCE CO. LTD.,
ALUVA.

BY ADV. SRI.E.M.JOSEPH

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 19/03/2007, THE COURT ON 13/4/2007 DELIVERED THE FOLLOWING:

P.R. RAMAN & ANTONY DOMINIC, JJ.

M.A.C.A. No.191 of 2004-G

Dated this the 13th day of April, 2007.

J U D G M E N T

Antony Dominic, J.

The parents, brother and sisters of late Benny Joseph, who died in a motor accident that occurred on 17.05.1995 at about 6.45 p.m., filed a claim petition under Section 166 of the MV Act before the Motor Accidents Claims Tribunal, Kottayam, claiming Rs.5 lakhs. The accident occurred when a bus, bearing Registration No. KL 7E 6417 driven by the 2nd respondent in which the deceased, aged 27 years, was a passenger, overturned and he was thrown out, causing injuries to which he succumbed on the spot itself. It was alleged that the accident occurred on account of the rash and negligent driving of the vehicle. The insurance company contested the case admitting the policy but denying negligence on the part of the driver. It was also contended that the claim was exorbitant and without any basis. Both sides did not adduce any oral evidence but Exts.A1 to A10 were marked on behalf of the claimants. By Award dated 30th April 2003, the Tribunal granted a total compensation of Rs.1,31,000/- to be deposited by the 3rd respondent insurance company.

2. The compensation for loss of dependency awarded is Rs.1,28,000/-. It has been quantified, fixing Rs.16,000/- as the anuual dependency and applying 8 as the multiplies, based on the age of the parents. In addition to this for pain and suffering, for loss of love and affection to the parents, towards funeral expenses and transportation, Rs.5,000/-, Rs.5,000/-, Rs.2,000/- and Rs.1,000/- respectively have been awarded. Although in the award the total compensation award is stated to be Rs.1,31,000/-, on a correct quantification, the amount is Rs.1,41,000/-.

3. The main contentions raised by the counsel for the appellants are two fold. He would contend that although the petition has been filed under Section 166 of the Motor Vehicles Act 1988 (hereinafter referred to 'the Act' for short), the quantum of compensation awarded can never be lesser than the amount payable as per the structured formula under Section 163A of the Act. It is also contended that the Tribunal erred in adopting 8 as the multiplier, based on the age of the parents of the deceased.

4. Elaborating the first contention, the counsel for the appellants heartily relied on a Division Bench judgment this Court in the case of **National Insurance Co., Ltd., Vs. Muneer (2003 (1) KLT 137)**. On the other hand, the counsel for the Insurance Company submitted that the scheme of Sections 166 and 163A are independent and different and that a claimant having chosen to prefer and contest a claim filed under Section

166 and after courting an award, cannot thereafter claim that compensation ought to have been awarded under Section 163A of the Act. Counsel relied on the judgments of in the cases of **Jacob Vs. Mohammed (2004 (1) KLT 893)**, **Deepal Girishbhai Soni Vs. United India Insurance Co. Ltd., reported in 2004 (2) KLT 395**, **Sherifa Beevi Vs. Komu (2006 (4) KLT 857) & National Insurance Co., Ltd. Vs. Jabbar (2007 (1) KLT 331)**. According to the counsel for the insurance company, adoption of multiplier based on the age of parents is a well known principle and has been judicially recognized in several judgments of this Court and the Apex Court. He has relied on the judgments in the case of **U.P. State Road Transport Corporation v. Trilok Chandra reported in 1996 (2) KLT 218, Tamil Nadu State Transport Corporation Ltd. Vs. Rajapriya reported in 2005 (2) KLT 848(SC), Bijoy Kumar Dugar Vs. Bidya Dhar Dutta and Ors., reported in 2006 (3) SCC 242**, **New India Assurance Co., Ltd., Vs. Satender reported in 2006 (4) KLT 974 & New India Assurance Co., Ltd. Vs. Vappu reported in 2007 (1) KLT 351**.

4. The first issue that is required to be resolved is the claim of the appellants for compensation under Section 163A of the Act, despite having filed the petition under Section 166 thereof.

5. Section 163A occurring in Chapter 11 of the Act is extracted below for reference:

> "Section 163-A. Special provision as to payment of compensation on structured formula basis.- (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorized insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.
>
> [Explanation.—For the purposes of this sub-section "permanent disability" shall have the same meaning and existent as in the Workmen's Compensation Act, 1923 (8 of 1923).
>
> (2) In any claim for compensation under Sub-Section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.
>
> (3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.]

This Section was inserted in the Act to provide for payment of compensation in motor accident case in accordance with the Second Schedule providing the structured formula. Section 163A of the Act was enacted for the grant of immediate relief to a Section of people, whose annual income is not more than Rs.40,000/-.

In **Jacob Vs. Mohammed (2004 (1) KLT 893)**, a Division Bench of this Court has held that "**it is true that when claims are filed under Section 166 of the Act, the court is not bound to follow the structural formula in the second schedule blindly and depending upon the circumstances variations can be made even though the second schedule is to be followed as a guideline**". This section was again interpreted by this Court in the case of **National Insurance Co., Ltd. Vs. Muneer reported in 2003 (1) KLT 137**. That case arose out of a claim petition filed by the parents and brother of a child, aged about 4 years under Section 166/ 168 of the Act, in which the Tribunal awarded compensation of Rs.1,50,000/-. In the appeal filed by the Insurance Company, this Court held as follows:

> "**But it is now trite that the Schedule to the Motor Vehicles Act can be reckoned as a safe guide while attempting to compute compensation payable even under S.166/168 of the Motor Vehicles Act. In the decision reported in *U.P. State Road Transport Corporation v. Trilok Chandra* (1996 (2) KLT 218 (SC)), the Supreme Court notwithstanding the fact that the accident in that case had taken place on 1.8.1977 – long prior to the 1994 amendment, indicated that S. 163A may safely be used as a guide for the purpose of ascertainment of the quantum of compensation even in a claim under S. 166/168 of the Motor Vehicles Act**".

Proceeding further it was further held that

> "**We are of opinion that merely because a claimant had chosen to claim a higher amount under S. 166/168 of the Motor Vehicles Act, it may not be just and equitable to**

> **deny him the pre-fixed compensation guaranteed under S.163A of the Motor Vehicles Act.**"

A reading of the judgment would show that this court has proceeded on the basis that in the **UPSRTC case**, the Hon'ble Supreme Court has indicated that even in a claim under Section 166/ 168 of the Act, Section 163A may safely be used as a guide for the purpose of ascertainment of compensation. It is on that reasoning that it has been held that even when compensation is awarded under Section 166/ 168, it can never be lesser than the amount payable under the structured formula under Section 163A of the Act and that merely because the claimant has wrongly quoted the Section, it would be unjust, unreasonable and improper to deny the claimant minimum compensation as would have been payable under Section 163A of the Act.

6. Since the very basis of the reasoning of the Division Bench of this Court is the judgment in the case of **UPSRTC**, a detailed reference to that the judgment of the Apex Court is necessary to understand the ratio laid down by the Apex Court. As is evident from paragraph 1 of the judgment, the question raised therein related to the use of correct multiplier for determination of compensation to be awarded to the legal representative of the victim of a road accident. While discussing the said question and laying down the correct principles to be followed, incidentally, in paragraph 17 of the judgment, the legislative change which led to the insertion of Sections 163A and 163B

has been taken note of by the Apex Court. On a careful and repeated reading of the judgment we are not in a position to derive any indication that the legal position settled is to the effect that in a case under Section 166, the structured formula under Section 163A has to be followed or that the compensation can never be less than as per the structured formula. In paragraph 18 thereof, after referring to the mistakes in the second schedule and pointing out that the table abounds in such mistakes, it has been held that neither the Tribunals nor the Courts can go by the ready reckoner and that it can only be used as a guide. This is only an observation and cannot be understood as one laying down that in a claim under Section 166, the structured formula has to be followed as a guideline.

7. We also note that in paragraph 6 of the judgment in the **National Insurance Co., Ltd. Vs. Muneer**, reference has been made to the Apex Court judgment in **Oriental Insurance Co., Ltd., Vs. Kodala reported in 2005 (1) SCC 175**, where it was held that the claims under Sections 168 and 163A of the Act are alternative and claimant cannot claim under both with a prayer to adjust the amount paid under Section 163A to his claim under Section 166/ 168. The correctness of this judgment was doubted and by order dated 19.04.2002, the case was referred to a three member bench and the reference was answered by the Apex Court in the case of **D.G. Soni Vs. U.I.I.Co., Ltd., (2004 (2) KLT 395)**. After tracing the Legislative history of the Act and Section 163A in particular, it has been held that the amount of compensation payable under Section 163A is not to

be altered or varied in any other proceeding and that in terms of the said provision a distinct and specified class of citizens, viz., persons whose annual income is Rs. 40,000/- or less is covered thereunder whereas Sections 140 and 166 cater to all sections of the society. It is also held that having regard to the fact that Section 166 of the Act provides for complete machinery for laying a claim on fault liability, the question of giving an option to the claimant to pursue their claims under Section 163A does not arise. On this reasoning it was held in paragraphs 57 to 61 of the judgment that;

> **"57. We, therefore, are of the opinion that remedy for payment of compensation both under Ss. 163-A and 166 being final and independent of each other as statutorily provided, a claimant cannot pursue his remedies thereunder simultaneously. One, thus, must opt/ elect to go either for a proceedings under S.163-A or under S.166 of the Act, but not under both.**
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> **58. In *Kodala* (supra) the contention of the claimant that right to get compensation is in addition to the no-fault liability was, thus, rightly rejected. In agreement with *Kodala* (supra) we are also of the opinion that unlike Ss.140 and 141 of the Act the Parliament did not want to provide additional compensation in terms of S.163-A of the Act.**

59. The question may be considered from different angles. AS for example, if in the proceedings under S.166 of the Act, after obtaining compensation under S.163-A, the awardee fails to prove that the accident took place owing to negligence on the part of the driver or if it is found as of fact that the deceased or the victim himself was responsible therefore as a consequence whereto the tribunal refuses to grant any compensation; would it be within its jurisdiction to direct refund either in whole or in part the amount of compensation already paid on the basis of structured formula? Further more, if in a case the tribunal upon considering the relevant materials comes to the conclusion that no case has been made out for awarding the compensation under S.166 of the Act, would it be at liberty to awardcompensation in terms of S.163-A thereof.

60. The answer to both the aforementioned questions must be rendered in the negative. In other words, the question of adjustment or refund will invariably arise in the event if it is held that the amount of compensation paid in the proceedings under S.163-A of the Act is interim in nature.

> **61. It is, therefore, evident that whenever the Parliament intended to provide for adjustment or refund of the compensation payable on the basis of no-fault liability, as for example, Ss.140 and 161 in case of hit and run motor accident, from the amount of compensation payable under the award on the basis of fault liability under S.168 of the Act, the same has expressly been provided for and having regard to the fact that no such procedure for refund or adjustment of compensation has been provided for in relation to the proceedings under S.163-A of the Act, it must be held that the scheme of the provisions under Ss.163-A and 166 are distinct and separate in nature".**

Thus, it is evident that the scheme of both sections 166A and 166/ 168 are different regions and the rights created thereunder are not optional.

8. A learned judge of this Court considered the question as to whether a claimant in an application under Section 163A is entitled to amend the claim to one under Section 166, in the case of **Sherifa Beevi Vs. Komu (2006 (4) KLT 857)** and held that;

> "**In that view of the matter, a claimant in an application under S.163-A of the Motor Vehicles Act is certainly entitled to amend the claim to be one under**

Ss.140 and 166. The bar is only that there cannot be a simultaneous claim under Ss.140 and 163 A or S.163A and 166. In the instant case the application for amendment is to amend a petition filed under S.163-A to one under S.140 read with S.166. Under law, as already stated above, the claimants are certainly entitled to such an amendment since the same is permissible under S.395 of the Act read with R.17 of O.VI CPC, and read with Ss.140, 163-A, 163-B and 166 of the Motor Vehicles Act".

Again in the case of **National Insurance Co., Ltd. Vs. Jabbar (2007 (1) KLT 331)**, following the judgment in the case of **Deepal Girishbhai Soni Vs. United India Insurance Co., Ltd., reported in 2004 (2) KLT 395**, a Learned Judge of this Court held as follows:

"**The learned counsel would contend that the bench in deciding *Kodala* (supra) not only failed to take into consideration the legislative history of the Act but also misinterpreted the scheme and structure thereof. The bench in *Kodala* (supra), the learned counsel would argue, furthermore failed to consider the effect of the Act which is beneficent in nature and, thus, was required to be construed liberally. Right to prosecute a remedy under common law must be barred either**

expressly or by necessary implication and such a bar having not been provided as regard a proceeding under S. 163-A of the Act, it is inconceivable, the learned counsel would submit, that a remedy provided for under the statue would not be made available to the suitor."

8. Thus, it is evident that the eligibility of a person to claim compensation could be governed by Sections 163A and 166/168. However, since the scheme of both these sections are distinct and different, a claimant is not entitled to pursue his remedies under Section 163A and 166/ 168 at the same time. The option in this regard is that of the claimant and if the option is not exercised at the time of filing the claim petition, suitable amendment should be made at the appropriate time and convert the claim to one under Section 163A of the Act. After pursuing the claim under Section 166/ 168, and courting an award unsatisfactory to the claimant, thereafter it is not open to the claimant to claim compensation as per the structured formula under Section 163A of the Act.

9. To our understanding, since the Scheme of the Sections are distinct and different, law does not cast any obligation for the Tribunal deciding a claim under Section 166/ 168, award the compensation in terms of the structured formula or vice versa and there is no legal requirement that the compensation awarded under Section 166/ 168, should not be less than the minimum provided in terms of the structured formula. As pointed by the Apex Court in **Deepal Girishbhai Soni Vs.**

United India Insurance Co. Ltd., (2004 (2) KLT 395), although the Act is a beneficial one and thus deserves liberal construction with a view to implementing the legislative intent, but it is trite that where such beneficial legislation has a scheme of its own and there is no vagueness or doubt therein, the court would not travel beyond the same and extent the scope of the statute on the pretext of extending the statutory benefit to those who are not covered thereby.

10. Bound by the law laid down by the Apex Court, we have to hold that a Tribunal dealing with a clam under Section 166/ 168 is obliged to decide the issue applying the legal parameters attached thereto. In this process, the yardsticks that are relevant for Section 163A are totally alien and it is not the requirement of law that the quantum of compensation awarded can never be lesser than the amount payable under the structured formula under Section 163A of the Act.

11. Having thus understood the law as laid down by the Apex Court and followed by this Court, in the manner as stated above, we are not in a position to accept the contention of the Learned Counsel for the appellant. In that view of the matter we also cannot agree with the argument of the counsel that even though the claim has been laid under Section 166 of the Act, the Tribunal ought to have awarded compensation in terms of Section 163A of the Act.

12. The other contention raised by the counsel for the

appellant is regarding the correctness of adopting the age of the parents of the deceased for determining the multiplier. It is contended that dependency ought to have been decided based on the age of the deceased. This issue, in our view does not admit of much controversy in view of the binding precedents on the subject.

13. In **U.P. State Road Transport Corporation v. Trilok Chandra reported in 1996 (2) KLT 218**, in paragraph 18 thereof it has been held by the Apex Court that "**For example, if the deceased, a bachelor, dies at the age of 45 and his dependents are his parents, age of the parents would also be relevant in the choice of multiplier**". In **Jacob Vs. Mohammed (2004 (1) KLT 893)**, it has been held by a Division Bench of this Court that "**when parents are the claimants, the court also can consider the age of the parents while awarding compensation in a claim filed under Section 166 of the Act**".

14. Again in **Bijoy Kumar Dugar Vs. Bidya Dhar Dutta and Ors., reported in 2006 (3) SCC 242**, award of compensation adopting multiplier of 12, taking into account the age of the parents of the deceased, was upheld by the Apex Court. **New India Assurance Co., Ltd., Vs. Satender (2006 (4) KLT 974)**, is yet another case where the Apex Court has held that "***In cases, where parents are claimants, relevant factor would be age of parents***". Still later, a Division Bench of this Court cases **New India**

Assurance Co., Ltd. Vs. Vappu reported in 2007 (1) KLT 351 has upheld the adoption of multiplier based on the age of the parents.

15. It is thus evident that where the deceased is a bachelor and claim is filed by the parents, the dependency has to be determined age of the parents can be adopted for determining the appropriate multiplier. In the impugned award, it is seen that while the deceased was 27 years, his parents were aged 62 and 56 years respectively. It is taking into account the age of the parents that the Tribunal adopted 8 as the multiplier and quantified the dependency benefit. We do not find any thing illegal in the method adopted by the Tribunal and we uphold the same.

16. In the result we do not find any merit in this appeal and dismiss the same without any order as to costs.

P.R. RAMAN,
Judge

ANTONY DOMINIC
JUDGE

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